

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Orlando Delgado,

Petitioner

V.

State of Nevada,

## Respondent

Case No.: 2:17-cv-02809-JAD-CWH

## Order Dismissing Case

9 Pro se petitioner Orlando Delgado is an inmate at the Clark County Detention Center who  
10 was allegedly detained for some videos that he posted on the internet about government  
11 officials.<sup>1</sup> He now petitions for a writ of habeas corpus, arguing that his arrest and detention  
12 violate his First Amendment right to freedom of speech.<sup>2</sup> But there are two problems with his  
13 petition: (1) he has identified an incorrect respondent,<sup>3</sup> and (2) there is a pending state action  
14 against him. The latter flaw is fatal to Delgado's petition, so I dismiss his case without leave to  
15 amend because amendment would be futile.

## Discussion

17       Federal courts should abstain from intervening in pending state criminal proceedings  
18 unless there are extraordinary circumstances of a great and immediate danger of irreparable  
19 harm.<sup>4</sup> A court “must abstain under *Younger* if four requirements are met: (1) a state-initiated  
20 proceeding is ongoing; (2) the proceeding implicates important state interests; (3) the federal  
21 plaintiff is not barred from litigating federal constitutional issues in the state proceeding; and (4)

<sup>1</sup> ECF No. 1-1.

<sup>2</sup> *Id.*

25 |<sup>3</sup> Delgado has identified the State of Nevada as the respondent, but the proper respondent is the  
26 | person who has custody over him. 28 U.S.C. § 2242. In this case, that would be the Sheriff of  
| Clark County.

<sup>27</sup> <sup>28</sup> <sup>4</sup> *Younger v. Harris*, 401 U.S. 37, 45–46 (1971); see also *Ex Parte Royall*, 117 U.S. 241, 251 (1886).

1 the federal court action would enjoin the proceeding or have the practical effect of doing so, i.e.,  
2 would interfere with the state proceeding in a way that *Younger* disapproves.”<sup>5</sup>

3 First, there is a criminal action pending against Delgado because he wants me to stop it.  
4 Second, the state has an important interest in prosecuting crimes.<sup>6</sup> Third, Delgado may raise his  
5 First Amendment claims in the state courts by motions before the trial court, on appeal, or in a  
6 post-conviction state habeas corpus petition. Fourth, if I granted Delgado the relief that he  
7 requests, his state-court criminal action would be terminated—an action that *Younger*  
8 disapproves of. Because all four of the *Younger* abstention requirements are met, I abstain from  
9 considering this petition and deny it. I also decline to issue a certificate of appealability because  
10 reasonable jurists would not find this conclusion to be debatable or wrong.

11 Accordingly, IT IS HEREBY ORDERED that the application to proceed *in forma*  
12 *pauperis* [ECF No. 4] is GRANTED. Delgado DOES NOT have to pay the \$5.00 filing fee.

13 The Clerk of Court is directed to DETACH and FILE the petition for a writ of habeas  
14 corpus under 28 U.S.C. § 2254 [ECF No. 1-1].

15 IT IS FURTHER ORDERED that this action is DISMISSED without prejudice to  
16 Delgado’s ability to litigate his claims in the correct court at the correct time. The Clerk of  
17 Court is directed to ENTER JUDGMENT accordingly and CLOSE THIS CASE.

18 IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

19 Dated: May 11, 2018

20   
21 U.S. District Judge Jennifer A. Dorsey

22  
23  
24  
25  
26 <sup>5</sup> *San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose*, 546 F.3d 1087, 1092 (9th Cir. 2008).

27 <sup>6</sup> See *Kelly v. Robinson*, 479 U.S. 36, 49 (1986); *Rose v. Mitchell*, 443 U.S. 545, 585 (1979);  
28 *Younger*, 401 U.S. at 43–44.